Federal Court  Cour fédérale

Date: 20200825

Docket: IMM-4639-19

Citation: 2020 FC 813

Toronto, Ontario, August 25, 2020

PRESENT: Mr. Justice A.D. Little

BETWEEN:

NIRALI NIMESHKUMAR SONI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review. The applicant, Ms. N.N. Soni, asks this Court to set aside a decision of an Immigration Officer made at the High Commission of Canada in New Delhi, India dated June 26, 2019. The Officer refused Ms Soni's applicant for a work permit.

[2] For the reasons below, the application is dismissed.

I. Facts and Events Leading to this Application

[3] Ms Soni is a citizen of India and resides in Gujarat. She is employed as a senior bookkeeper with a firm in Gujarat, is married and has a teenage son.

[4] In November 2017, Ms Soni obtained a multiple-entry Temporary Resident Visa ("TRV") to visit Canada. A travel agent assisted Ms Soni to complete the TRV application.

[5] In September 2018, Ms Soni accepted an offer for employment as a bookkeeper with a company in Pembroke, Ontario. In October 2018, her prospective employer in Canada obtained a positive Labour Market Impact Assessment ("LMIA") which was valid until April 13, 2019.

[6] On March 26, 2019, Ms Soni travelled with her husband and son to Canada, arriving at Pearson International Airport in Toronto. They were scheduled to return to India on April 29, 2019 and ultimately did so.

[7] On arrival at Pearson Airport, Ms Soni's husband informed a CBSA Officer that the purpose of their trip was to "visit" Canada. Neither he nor Ms Soni mentioned her job offer, the LMIA, or a possible work permit application.

[8] Within days of their entry into Canada, Ms Soni visited the immigration consultant retained by her prospective employer. The consultant told her that her LMIA would expire just

two weeks later on April 13 and that the best option was to apply for a work permit at the nearest port of entry.

[9] Following quickly-arranged medical examinations on April 1, Ms Soni and her family went to the Rainbow Bridge port of entry on April 2 to apply for a work permit. However, she did not have the required original documents she needed – she testified that she had no prior plan to apply for a work permit while in Canada, so she had not brought original documents with her. Without the originals, her application for a work permit was refused.

[10] Ms Soni arranged for the original documents to be couriered from India. On April 10, she returned to the Rainbow Bridge port of entry with them. This time, the medical examination information was not yet in her file.

[11] By the next day, April 11, the medical documents had been uploaded. She applied again for a work permit, this time at the Peace Bridge port of entry. She was interviewed. During that interview, an Officer raised certain concerns about Ms Soni's application, which caused her to withdraw it. At that time, she received a form authorizing her to leave Canada.

[12] According to Ms Soni, the Officer at the Peace Bridge (whom I will call the "Peace Bridge Officer" for clarity) raised two concerns during the April 11 interview: (a) Ms Soni was untruthful in completing the declaration form signed on the airplane during her flight to Canada (she ticked the box for Personal, not Business or Study, as the purpose of her trip to Canada); and (b) Ms Soni's TRV application stated she had "zero education" and that she was a "housewife",

whereas her work permit application advised that she holds a Bachelor's degree in Mathematics and is employed outside her home as a bookkeeper.

[13] On April 12, Ms Soni's LMIA was extended by 30 days, enabling her to re-apply for a work permit. On April 29, Ms Soni and her family returned as scheduled to India.

[14] On May 10, from India, Ms Soni applied online to the Canadian High Commission in New Delhi for a LMIA-based work permit, as well as an open work permit for her spouse and a study permit application for her son. Her application included a Statutory Declaration sworn in Canada and dated April 16, 2019, in which she explained the circumstances of her visit to Canada and addressed the concerns raised by the Peace Bridge Officer on April 11. The application also included a letter from the travel consultant who had prepared her TRV application containing the incorrect information, and an 8-page letter from her Canadian legal counsel in support of her application.

[15] An Officer in the High Commission refused her application for a work permit and, consequently, the related applications for her spouse and son. The High Commission advised Ms Soni of the Officer's decision by letter dated June 26, 2019. The letter stated that the basis for refusing the application was that the Officer was "not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 200(1) of the *IRPR*, based on the purpose of your visit." The "*IRPR*" is the *Immigration and Refugee Protection Regulations*, SOR 2002/227 (the "*IRPR*").

[16] Subsection 200(1) of the *IRPR* provides that, in respect of a foreign national who makes an application for a work permit before entering Canada, an Officer shall issue a work permit if, following an examination, certain things are established. Paragraph (*b*) sets out the requirement that "the foreign national will leave Canada by the end of the period authorized for their stay …"

II. Issues Raised by the Applicant

[17] The applicant raises two issues. First, relying on *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, Ms Soni submits that the Officer's decision is fundamentally flawed as being based on an irrational chain of analysis and not justified in relation to the relevant law and facts. She argues that the Officer based the decision on irrelevant and extraneous criteria, ignored evidence in her Statutory Declaration that contradicted the conclusion reached and failed to properly engage with and articulate why her sworn statement did not allay the Officer's concerns.

[18] Second, Ms Soni contends that the Officer's reasons are inadequate. She submits that the Officer's failure to address the evidence renders the decision inadequate and unintelligible. She argues that the reasons provide no insight into why the Officer refused the application.

[19] In the course of these submissions, Ms Soni argues that if the Officer had concerns about her sworn statement, Ms Soni should have been given an opportunity to respond as a matter of procedural fairness as to do otherwise would be a "veiled negative credibility finding".

[20] The respondent's position is that the Officer's decision was reasonable. The Minister submits that Ms Soni provided untruthful answers – lies – to Canadian immigration authorities on two separate occasions. Regardless of the explanations she provided with her application, the respondent contends that a finding that the applicant was not truthful is a reasonable reason for denying an application for a work permit: *Porfirio v Canada (Citizenship and Immigration),* 2011 FC 794 (Near, J.); *Chamma v Canada (Citizenship and Immigration),* 2018 FC 29 (Shore, J.).

[21] The respondent further submits that when Officers make decisions about whether an applicant will leave Canada at the end of their permitted stay, evidence of prior interactions with immigration officials are the best indicators of an applicant's likelihood of future compliance. The Officer chose to weigh the applicant's past conduct and other factors over the various explanations provided by the applicant to explain her misstatements, and made a reasonable finding.

[22] On the applicant's second overall submission, the respondent submits that adequacy of reasons is not a standalone reason for setting aside a decision and that the decision is "clear and reasonable".

III. Standard of Review

[23] Reasonableness is the presumed standard applicable to judicial review of administrative decisions. This presumption of reasonableness review applies to all aspects of the decision. See *Vavilov,* at paras 16, 23 and 25. The presumption may be rebutted by legislative intent, or if the

rule of law requires a different standard: *Vavilov*, at paras 17, 23 and 69. *Vavilov* identifies only five such situations: see *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 (Stratas, JA), at para 16. None of those exceptions applies here.

[24] The parties both submit, and I agree, that the standard of review of the Officer's decision in this matter is reasonableness.

[25] A reasonable decision is one that is: (a) based on an internally coherent and a rational chain of analysis and (b) justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. An otherwise reasonable outcome will not stand if it was reached on an improper basis, for example by an unreasonable chain of analysis in the reasons, or if the decision is not justified in relation to the facts and applicable law: *Vavilov*, at paras 83-86 and 96-97; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6.

[26] Reasonableness review entails a sensitive and respectful, but robust, evaluation of administrative decisions: *Vavilov* at paras 12-13. While the reviewing court's review is robust – meaning it will be thorough and sensitive to the legal and factual circumstances in each case – it is also disciplined. Not all errors or concerns about a decision will warrant intervention. The reviewing court must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov*, at para 100. Flaws or shortcomings must be more than superficial or

peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently fundamental or significant to render the decision unreasonable: para 100.

[27] The Supreme Court in *Vavilov*, at paragraph 101, identified two types of fundamental flaws: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. The Court in *Vavilov* contemplated that the reviewing court may consider whether evidence before the decision-maker constitutes a factual constraint on the decision-maker. However, the reviewing court must not reweigh or reassess the evidence: *Vavilov*, at paras 125-126.

[28] The Supreme Court also contemplated that in assessing reasonableness, the reviewing court may consider the submissions of the parties to the decision-maker, because the decision-maker's reasons must meaningfully account for the central issues and concerns raised by the parties: *Vavilov*, at para 127. This is connected to the principle of procedural fairness and the right of the parties to be heard, and listened to. The decision-maker is not required to respond to every line of argument or possible analysis or to make explicit findings on every point leading to a conclusion. However, a decision-maker's failure to meaningfully grapple with key issues or central arguments raised by the parties "may call into question whether the decision-maker was actually alert and sensitive to the matter before it." *Vavilov*, at para 128.

[29] On procedural fairness, the applicant states that the standard of review is correctness. Whether described as a correctness standard of review or as this Court's obligation to ensure that

the process was procedurally fair, I agree with the applicant that judicial review of procedural fairness involves no margin of appreciation or deference by a reviewing court. The ultimate question is whether the party affected knew the case to meet and had a full and fair or meaningful chance to respond: see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121 (Rennie, JA) esp. at paras 49, 54 and 56; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (L'Heureux-Dubé, J.), at para 22.

IV. Analysis

A. *Was the Decision Unreasonable under Vavilov Principles?*

[30] In my view, the Officer's decision was reasonable. It does not contain a fundamental flaw in its overarching logic and is not untenable in view of the evidence and the submissions made by Ms Soni. The conclusion reached under *IRPR* paragraph 200(1)(*b*) was open to the Officer based on the evidence. While the Officer's reasons do not contain every point of analysis that one would expect from a court or tribunal, that level of assessment is not required by *Vavilov*. The reasons for denying the work permit are adequate and overall, the Officer's decision is sufficiently transparent, intelligible and justified.

[31] On this application, the applicant provided comprehensive written submissions challenging the Officer's decision. In essence, they focus on the following passage in the Officer's entry in the Global Case Management System:

> … given the discrepancies and contradictions between the applicant's TRV [Temporary Resident Visa] application and her

> current stated employment history, while considering her migration history and repeated attempts to obtain a WP [work permit] at the border while on a TRV, and in light of the fact that the whole family would travel together, I am not satisfied …

[32] There are three elements to this passage, which the applicant's submissions address as follows:

> (i) the "discrepancies and contradictions between the applicant's TRV application and her current stated employment history", were "inadvertent and honest errors" for which Ms Soni's travel consultant (who prepared the TRV application) has taken full responsibility;
>
> (ii) Ms Soni's "migration history and repeated attempts to obtain a WP at the border while on a TRV", were explained in her Statutory Declaration and were all lawful. She contends that the Officer ignored her evidence about why she and her husband advised the border Officer on March 26 that the purpose of their trip to Canada was to "visit". She also contends that she provided a reasonable explanation for her multiple attempts to obtain a work permit at the border that squarely contradicts the conclusion of the Officer. According to Ms Soni, these lawful efforts should have favoured her application, no negative inference can be drawn against her, and to do so is unreasonable according to *Campbell Hara v Canada (Citizenship and Immigration)*, 2009 FC 263 (Russell, J.); and
>
> (iii) the fact that the "whole family would travel together" is no basis for a negative inference against her.

[33] Reduced to its core, the applicant contends that the Officer failed to engage explicitly and meaningfully with the explanations and evidence in Ms Soni's Statutory Declaration. As her counsel concluded in written submissions, the "applicant deserved a decision that considered the entirety of her submitted materials. This was not done."

[34] A few introductory points begin the analysis. First, the Supreme Court's decision in *Vavilov* requires that a reviewing court look at the decision as a whole – not just a few lines or a particular passage (at paras 15, 85, 99 and 102). That is not to say that the fundamental logic or key reasoning in a decision may not be captured in a particular passage – it often is. But the wider arc of reasoning, including the decision-maker's appreciation of the circumstances in the particular case, must be considered together with the overall outcome.

[35] Second, the Supreme Court's decision in *Vavilov* emphasized the creation of a "culture of justification" in administrative decision-making (at paras 2 and 14). The Court held that on a judicial review application, the reviewing judge must consider both the reasons provided by decision-maker and the overall outcome (at paras 83 and 87). The reviewing court should start with the reasons, as they are the "primary mechanism by which administrative decision-makers show that their decisions are reasonable" (at para 81). "[C]lose attention" must be paid to those reasons (at para 97).

[36] Third, and relatedly, the legal requirements for justification cannot lose sight of the specific context in which the impugned decision arises. The decision must be responsive to those affected by it, particularly if the impact of the decision on the individual's rights and interests is severe: *Vavilov*, at paras 86 and 133. Judicial review of the decision must also be mindful of the legal context of the impugned decision: *Vavilov*, at paras 86 and 89-94.

[37] In this case, Ms Soni is a foreign national who applied from outside Canada for a work permit. The application was naturally of significance in the minds of Ms Soni and her family

(particularly in relation to her son's future education, based on her Statutory Declaration). However, in my view, the impact of the Officer's decision on her rights and interests (if any) cannot be characterized as severe: *Sharma v. Canada (Citizenship and Immigration)*, 2020 FC 381 (Gascon, J.), at para 32; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 (Rennie, J.), at paras. 9-10; *Qin v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 815 (Rothstein, JA), at para. 5.

[38] As I will explain, in this case the Officer's decision resolved to a focal point – Ms Soni's truthfulness in her dealings with Canadian immigration officials – which directly affected the Officer's determination about whether she, as a foreign national, would leave Canada by the end of the period authorized for her stay under *IRPR* paragraph 200(1)(*b*). Although the reasons for refusing her work permit application had to be responsive to the particular circumstances in the record, in my view the Court's reasoning in *Vavilov* did not require the Officer at the High Commission to write extended reasons examining each nuance of Ms Soni's work permit application, or analyzing every nook and cranny of her counsel's legal argument, in order to comply with the requirements of justification, transparency and intelligibility in our administrative law: *Vavilov*, at para 128.

[39] The applicant's submissions on this application turn on the contents of her Statutory Declaration and the Officer's alleged failure to engage properly with and give effect to them. What was in that Statutory Declaration? In overview, Ms Soni first set out the background and her purpose(s) in coming to Canada in March 2019 (at paras 1-6 and 8-9). She described her arrival at the airport (at para 7) and her visit with the immigration consultant and the medical

appointments on April 1 (at paras 10-12). She explained her applications at the ports of entry from April 2 to April 11, the concerns raised by the Peace Bridge Officer on April 11 and her reaction (at paras 12-24, 29, 37-38 and 40-43). She also describes her explanations and responses to those concerns through her immediate contact with the travel agent who prepared her TRV application (at paras 25-28 and 30-31) and her actual education and work history (at paras 32-36). She also noted the extension of her LMIA (at para 39).

[40] Her Canadian legal counsel integrated this content, and much more, into their letter to the High Commission dated May 10, 2019 that was included with her application for a work permit. Over eight single-spaced pages, the letter set out in detail:

- the proposed employment position in Pembroke (at pp. 1-2);
- Ms Soni's education and work experience (at p. 2);
- Ms Soni's immigration history – which included the discussion with the border Officer at the airport, her applications at the ports of entry, the concerns raised by the Officer, and the travel agent having taken "full responsibility for the incorrect information" as a result of "their errors" (underlined and bolded in both cases) (at pp. 2-4);
- Legal Submissions under the general heading "Ms Soni is not inadmissible for misrepresentation" and the subheadings "Ms Soni's inadvertent errors in her application forms" and "Ms Soni's genuine intention to enter as a visitor". These submissions on pp. 4-6 included specific case law from this Court with block quotations;
- Accompanying Dependents (at pp. 6-7); and

- A list of the twenty Supporting Documents, including the Statutory Declaration (at pp. 7-8).

[41] As is apparent from this list (and is perfectly clear from reading the letter), Ms Soni's legal counsel set out and advocated for her position overall and specifically for her explanations in response to the two truthfulness concerns raised by the Peace Bridge Officer on April 11.

[42] Turning to those truthfulness concerns and Ms Soni's explanations in response to them: First, in her Statutory Declaration, Ms Soni did not deny that there were inconsistencies between her TRV application and her work permit. Ms Soni characterized that concern as, having signed and dated the initial application for a visa, that she "should have had full knowledge of the contents of the application form as I was an educated person" (at para 29). She expressed her shock and surprise when the Peace Bridge Officer raised the inconsistencies. She explained in her declaration that, having provided the consultant's office with the correct information, she put her "whole trust and belief" in the travel consultant and simply signed and dated the application as the consultant instructed. Her legal counsel's letter characterized it as a "mistake and honest error" and an "administrative error" by the consultant, as well as a "minor lapse in diligence by entrusting" the consultant and for failing to properly review the forms (counsel's letter, at pp. 4, 5 and 6). Her work permit application attached a short letter from the consultant that appears to take responsibility for the errors.

[43] On the other truthfulness concern, Ms Soni's position was different. She claimed she had no opportunity to offer details on her arrival at the border on March 26 and that, in any event,

there was no non-disclosure problem, given what was in her mind at the time. Her husband told the border Officer that the purpose of their trip was to "visit" Canada. According to Ms Soni's Statutory Declaration, "the Officer looked at me and did not ask me any details and I did not have an opportunity to offer any details regarding my LMIA; […] in our minds, coming to see Canada and to check on schools etc prior to making an application was to visit". She also testified about the purpose of the trip:

> 5. That, my primary reason for coming to Canada was to see Canada especially the schools for my son Viren who had completed his 11th grade board exams and was on holidays so that if he was able to find it suitable, we could move, or if there were any summer courses for him to take;
>
> 6. That if we found it suitable, we could then make a decision as to applying for my work permit and Viren's study permit, whilst my husband returned to his business in India; with this in mind, I came to Canada accompanied by my husband and son; that this was a big step in our lives and with him being our only child, I was heavily concerned that things should work out for him.

She noted at paragraph 8 that her LMIA had a dual intent – both for the work permit and to support her permanent residency. Her counsel's letter to the High Commission reinforces her position that the purpose of the trip was to visit and that no misrepresentation occurred (at pp. 5-6).

[44] Now to the main question: Did the Officer fail to engage sufficiently with Ms Soni's explanations just described, so as to make the Officer's decision unreasonable? I do not believe so.

[45] It is clear from a closer review of the GCMS Notes that the Officer was aware of both the events material to the determination of whether Ms Soni would leave Canada at the end of her proposed stay, and Ms Soni's position on them. I will organize the explanation that follows around the 'operative' passage whose reasoning the applicant has challenged on this application.

[46] The 'operative' passage and its three elements do not stand alone in the Officer's GCMS Notes. On the first element, the GCMS Notes had already described the "discrepancies and contradictions between the applicant's TRV application and her current stated employment history", as follows:

> … on her previous TRV application, [Ms Soni] declared being housewife and having no education experience. One letter of employment indicates that [she] was employed as Bookkeeper from November 2007 to April 2009. Another letter indicates that [she] worked for another company from April 2009 to date. No pay stubs have been provided but salary certificates are on file. The discrepancy between the previous statements of the applicant and the letter [*sic*: letters] now presented on file raise concern.

It was at this point that the Officer stated: "I have noted and considered the submission from the applicant's representative, however, my concerns remain." Counsel for Ms Soni agreed at the hearing that this sentence refers to her legal counsel's comprehensive letter to the High Commission dated May 10, 2019.

[47] The Officer was clearly aware of and concerned about the inconsistencies in Ms Soni's original application, prepared by the travel agent but which Ms Soni signed and dated, and the corrected facts about her education and employment history as disclosed in her work permit

application. Despite having read her counsel's letter, which contained Ms Soni's explanations, the Officer's concerns remained.

[48] On the second element challenged by the applicant, again the Officer's GCMS Notes had already described Ms Soni's "migration history and repeated attempts to obtain a WP at the border while on a TRV". The Officer noted Ms. Soni's original entry into Canada on March 26, "not disclosing her employment prospects". The GCMS Notes then continued that Ms Soni:

> … flagpoled once, was refused a WP [work permit] at the border on April 2, received a VR [Visitor Record] and re-applied again on April 10, 2019. She was again refused and eventually received an ATL [Authorization to Leave], with which I note she complied.

[49] The Officer was clearly aware of the events at issue and the non-disclosure concern that arose at the border when Ms Soni and her husband arrived on March 26, as identified by the Peace Bridge Officer on April 11 and which Ms Soni sought to explain in her Statutory Declaration. Her legal counsel's letter reiterated her explanation and advocated her position, at pp. 5-6. It is also not clear from the record how the Officer would have identified the non-disclosure of her employment prospects in the record unless the Officer had read counsel's letter or her Statutory Declaration.

[50] I note that at the end of the GCMS excerpt just quoted, the Officer recognized that Ms Soni complied with the requirement to exit Canada on April 29. That must have been a fact in favour of Ms Soni in deciding whether she would leave Canada at the end of a proposed work permit.

[51] On the third element, the Officer was also aware from the record that the family would travel together. The Officer's GCMS Notes refer to three applications for visas both at the outset and at the end. I will return below to Ms Soni's position on this third element.

[52] It is these three elements and the stated circumstances that led the Officer to conclude that "I am not satisfied, on balance, that the applicant would be a bona fide temporary resident who would respect the terms of her authorized stay" under *IRPR* paragraph 200(1)(*b*) by leaving at the end of her work permit.

[53] From this review, it is apparent that the GCMS Notes clearly identified the "discrepancies" and the "non-disclosure" in Ms Soni's migration history. Both raise the same point: whether Ms Soni had been truthful with immigration officials. In my view, that was at the heart of the Officer's reasoning in the GCMS Notes. There is also no other way to read the Officer's reference to the "concerns" that remained after reading counsel's letter (recognizing that at that point, the Officer appears only to be referring to the "discrepancies"). The Officer's recognition is not surprising: the Peace Bridge Officer in Canada had also recognized and articulated those same concerns to Ms Soni on April 11. Less than a week later, while still in Canada, she swore the Statutory Declaration that addressed them in detail. She retained Canadian counsel who summarized all the evidence to support her work permit application and made submissions on her behalf to address those very concerns.

[54] The applicant and the respondent clash on whether the Officer properly analyzed the three elements and Ms Soni's explanations. The applicant contends that the Officer failed to

engage sufficiently with her explanations given under oath and should have given effect to them, while the respondent argues that it is simple: Ms Soni lied, twice, and the Officer had the legal right to refuse her work permit application on that basis alone.

[55] I do not agree completely with either party. I agree with the applicant that the GCMS Notes do not state that Ms Soni lied (i.e. *intentionally* misstated her education and employment) on her TRV application or that she *intentionally* did not disclose the true purpose or all the purposes of her visit at the border on March 26. But it was not necessary for the Officer to go that far. The issue for the Officer was whether Ms Soni would leave Canada by the end of the period authorized for her stay in the requested work permit, under *IRPR* paragraph 2001(1)(*b*). Thus it was sufficient for the Officer to recognize, as factors in considering whether she would so exit Canada, the matters expressly stated in the GCMS Notes – her migration history included "not disclosing her employment prospects" to the border Officer on March 26 and the factual "discrepancies" between her TRV application and her work permit application.

[56] The respondent observed that Ms Soni's past interactions with Canadian immigration officials are generally relevant to the Officer's assessment under paragraph 200(1)(*b*): see *Calaunan v. Canada (Citizenship and Immigration)*, 2011 FC 1494 (Boivin, J.), at para 28; *Obeng v. Canada (Citizenship and Immigration)*, 2008 FC 754 (Lagacé, J.), at para 13; *Ngalamulume v Canada* (*Citizenship and Immigration)*, 2009 FC 1593 (Boivin, J.), at paras 18 and 28. In addition, I agree with the respondent that the Officer was entitled to take into account Ms Soni's truthfulness on relevant matters, or her lack of accuracy or completeness in relevant communications with immigration officials under the *IRPA*, when making a decision to grant or

refuse the work permit and specifically in assessing whether Ms Soni would leave Canada by the end of the period authorized for her stay under paragraph 200(1)(*b*): see *IRPA*, s. 16; *Porfirio,* at para 45; *Chamma,* at para 39; *Mescallado v Canada (Citizenship and Immigration)*, 2011 FC 462 (Phelan, J.), at para 16; *Barud* v *Canada (Citizenship and Immigration)*, 2019 FC 1441 (Pentney, J.).

[57] I am unable to conclude, as the applicant urges, that the Officer was required, legally or factually, to accept the explanations in Ms Soni's Statutory Declaration (or for that matter, in the travel agent's letter or her legal counsel's letter). Her explanations did not operate as a constraint on the Officer in the manner contemplated by *Vavilov*. The Officer expressly stated that he or she had considered legal counsel's letter that contained those explanations, but the officer's concerns remained.

[58] Properly understood, Ms Soni is asking the Court to reassess or reweigh the evidence of her submitting a signed visa application that contained admitted errors and her explanation for that, and to reassess or reweigh the evidence about the non-disclosure of her employment agreement and LMIA and purposes of her visit to Canada starting on March 26 based on her version of events. That is not the role of a court on a judicial review application: *Vavilov*, at para 125.

[59] In my view, the Officer sufficiently understood and considered the evidence and the central arguments made by Ms Soni and her counsel: see *Vavilov* at paras 126-128. This is not a

case where a decision-maker ignored, fundamentally misapprehended or failed to account for evidence so as to render the decision "untenable".

[60] The applicant's submissions referred to numerous decisions of this Court. I will address two in particular. In *Xie v Canada (Citizenship and Immigration)*, 2012 FC 1239 ("Xie"), the applicant filed a declaration with his work permit application that explained why he would not remain in Canada after his authorized stay. Mr Xie also stated that he was the heir to a building in China owned by his father that had considerable value, a claim that was supported by a declaration from his father. An Officer failed to consider the declaration and Justice Pinard set aside the decision on judicial review.

[61] *Xie* is distinguishable from the present case. The Court in *Xie*, and in the cases it considered, was concerned with statements that an applicant would leave the country at the end of a permitted stay. Such statements may range from a mere blanket statement that may be banal, to a more convincing conclusion supported by additional evidence of the applicant's ties to another country and absence of ties to Canada (or both). In his case, Mr Xie expressly stated in a sworn declaration that he would return to China at the end of his permitted stay in Canada and provided supporting evidence to explain why.

[62] That is not the situation here. First, Ms Soni made no such express statement in her Statutory Declaration. It is not possible to say whether or how such a statement and explanation – assuming she could have provided them – might ultimately have affected the Officer's decision on her work permit application. In addition, unlike *Xie*, the applicant's Statutory Declaration

does not address the applicant's or her husband's ties to India or any other reasons why she or the family will return to India at the end of her requested work permit. The applicant does not argue that the Officer failed to consider this kind of evidence and no such evidence appears in her Statutory Declaration.

[63] The applicant also relied on *Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 ("Aghaalikhani"). It is also unlike the present case. In *Aghaalikhani*, Justice Gascon held that there was no evidence to support the Officer's views that the applicant had ties to Canada and would therefore not leave at the end of a study permit. See paragraphs 19 ("deafening silence of the record on Mr Aghaalikhani's ties to Canada"), 20 ("dearth of evidence to support the Officer's factual finding"), 21 (contrary to evidence from the applicant that he had a job offer waiting for him in Iran) and 22 ("no evidence on the record" to support two of the three factors mentioned by the Officer and the Officer's overall conclusion). A key element in Justice Gascon's analysis was that the Officer disregarded the material in the record. He concluded that the Officer's reasons were incomprehensible because there was "no evidence on the record to support them and they appear to be completely arbitrary in light of the evidence submitted" (at para 26). See also his references to irrationality, arbitrariness, illogic and "factual findings without any basis whatsoever" in paragraph 17.

[64] By contrast, in this case there is evidence in the record here to support the Officer's concerns about the truthfulness of Ms Soni's interactions with immigration officials. The explanations in her Statutory Declaration, which she submits were ignored, were not the only evidence on the issue – they were her attempt to explain away the "discrepancies" and the non-

disclosure at the border. Based on the GCMS Notes, I am satisfied that the Officer did not disregard the material in the work permit application. In addition, I do not have the same underlying concerns about arbitrariness or irrationality identified by Justice Gascon in *Aghaalikhani*.

[65] I should address two additional points in Ms Soni's argument. On the second element, I acknowledge that the Officer's consideration of Ms Soni's "repeated attempts to obtain a WP at the border while on a TRV" is somewhat ambiguous and perhaps puzzling. The respondent characterized it as a "mere recitation" of fact. I do not think so. As explained in her Statutory Declaration and through the supporting documents such as her DHL courier receipt, Ms Soni's efforts to apply for a work permit at the ports of entry in April 2019 became something of a comedy of errors, with some elements out of her control. However, in the end, even accepting her position on this issue would not render the Officer's overall decision untenable or unreasonable on *Vavilov* standards.

[66] Lastly, I return to the third element. Ms Soni objects to the apparent negative inference made by the Officer from the fact that that the family would travel together. The Officer must have considered their travel together as some evidence that Ms Soni would not be leaving her immediate family behind in India in order to pursue the work opportunity in Canada. It is hard to see how it is improper to do so when determining whether she would leave Canada at the end of her permitted stay under *IRPR* paragraph 200(1)(*b*). Consider the converse – if the evidence were that her husband and son did *not* propose to come to Canada during her intended work period,

those personal ties remaining in India would surely have been relevant to the determination of whether she would leave as required.

[67] For these reasons, I conclude that the Officer's decision was reasonable.

B. *Procedural Fairness*

[68] Procedural fairness requires that a party know the case to meet and have a meaningful opportunity to respond to it. Ms Soni submitted that if the Officer had concerns about her sworn Statutory Declaration, she should have been given an opportunity to respond.

[69] I do not believe that the Officer failed to provide the applicant with procedural fairness in this case. In fact, she had an opportunity to respond and well availed herself of it. The concerns identified by the Officer in the GCMS Notes were the same as those identified to Ms Soni by the Peace Bridge Officer at that port of entry on April 11, 2019. She addressed those issues in her Statutory Declaration sworn in Canada a week later. Her counsel advocated on those issues in their May 10, 2019 letter. Both were submitted for the Officer's consideration. If anything, Ms Soni had ample advance warning about the concerns an Officer might have when considering her work permit, and was able to take prolific steps to try to address them. In my view, the Officer was not required to provide Ms Soni with an additional kick at the same can.

C. *Were the Officer's Reasons Inadequate?*

[70] The applicant's submission that the Officer's reasons were inadequate overlapped significantly with her arguments on unreasonableness generally. I will try to focus on the different points made about the adequacy of the reasons.

[71] The applicant relied on a number of court decisions, beginning with *LeBon v Attorney General of Canada*, 2012 FCA 132 (*"LeBon"*). In that case, the applicant was incarcerated outside Canada. The Minister of Public Safety and Emergency Preparedness denied his request for a transfer to Canada and he unsuccessfully applied to this Court for judicial review. Justice Dawson, speaking for the Federal Court of Appeal, allowed an appeal and set aside the Minister's denial of a transfer.

[72] The Minister in *LeBon* denied the transfer request despite the "unequivocal" opinion of the Correctional Service of Canada ("CSC") that Mr LeBon would, after transfer, not commit an act of organized crime or any indictable crime after his release. In setting aside the Minister's decision, Justice Dawson held that there was no bright line test that determines what level of explanation is required when the Minister disagrees with advice – each case depends on the record before the Minister. In some cases, little or no explanation may be required because the record may make it apparent why the Minister disagreed. However, in *LeBon*, counsel on the appeal could not point to any cogent evidence in the record that would reasonably undermine or contradict the CSC's opinion. Yet the Minister disagreed with that advice and concluded the opposite about the likelihood of a crime being committed. In the circumstances, "the conclusion reached was not justified, transparent or intelligible:" see *LeBon*, at paras 20 and 23.

[73] The Minister in *LeBon* was required by statute to provide written reasons for the decision. Justice Dawson held that the statute required the Minister to do more than assert that the unique facts and circumstances had been considered in the context of the legal test. If there were factors that support the requested transfer, the Minister had to demonstrate "some assessment of the competing factors so as to explain why he refused to consent to the transfer" – without which the decision is neither transparent nor intelligible and would not comply with the statutory requirement to give reasons: *LeBon*, at para 25.

[74] The applicant also referred to Justice Fuhrer's recent decision in *Iyiola v Canada (Citizenship and Immigration)*, 2020 FC 324 ("*Iyiola*"), a study visa case. Borrowing language from *Vavilov*, my colleague stated at paragraph 18 that while a visa Officer's notes may be sparse, they must nonetheless shed insight (an internally coherent and rational chain of analysis within applicable factual and legal constraints: *Vavilov*) as to why the Officer refused an application. Justice Fuhrer concluded that an Officer did not articulate intelligibly or reasonably why Mr Iyiola was not considered a genuine student (at para 19) nor why the Officer concluded that Mr Iyiola may not leave Canada at the end of his authorized period of stay (at para 20). On the latter, the Officer's decision was unintelligible for failure to deal with the applicant's significant family ties in his home country and why the absence of a spouse or prior documented foreign travel would be factors against a student visa.

[75] In contrast with *LeBon*, the decision-maker in this case was not faced with an unequivocal opinion or a one-sided set of facts that could lead to a single conclusion. The Officer had to decide whether to accept Ms Soni's explanations for the admitted inconsistencies between

her TRV application and her work permit application, and for the communications at the border on March 26 related to the purposes of that trip. The Officer's concerns went to Ms Soni's truthfulness in interactions with immigration officials. Nor did the Officer need to weigh evidence of various factors that might tie Ms Soni and her family to India or to Canada as in *Iyiola* – as already noted, there was no such evidence. And as I have already explained, although there was no statutory obligation to provide reasons as there was in *LeBon*, the GCMS Notes shed sufficient insight into why the Officer concluded that Ms Soni would not leave Canada at the end of her authorized stay under *IRPR* paragraph 200(1)(*b*).

[76] I have also considered the applicant's submissions about the adequacy of the Officer's reasons based on *Aghaalikhani*. For the reasons already stated, the reasons in the present case do not suffer from the same flaws as Justice Gascon identified in *Aghaalikhani.*

[77] I conclude that there is no basis to set aside the Officer's decision on the basis that the reasons were inadequate.

V. Conclusion and Disposition

[78] There is one final observation. As noted already, the Officer at the High Commission refused the application for a study permit made on behalf of Ms Soni's son, Viren Nimeshbhai Soni, expressly as a consequence of the refusal of his mother's application for a work permit. Nothing in the letter from the High Commission or in the Officer's GCMS Notes suggests that the application for Viren's study permit was either considered, or refused, on its own merits. The same may be said about the application of Ms Soni's husband, Nimeshkumar Dhirubhai Soni.

[79] The application is dismissed. Neither party proposed a question for certification and none arises. This is not a case for costs.

JUDGMENT in IMM-4639-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The Court does not certify a question under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.
3. There is no order as to costs.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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